make an order for security for costs to be provided before the application could be restored for hearing. He is relying upon Order 65 rule 6A of the Rules of the Supreme Court, 1957 which states that —

"A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction."

Mr. Shankar also referred to a passage in *Mallal's* Supreme Court Practice page 1064 which says that —

"The rule that security for costs should be given by a plaintiff who ordinarily resides outside the jurisdiction of the court in which the action is brought, and who owns no property in the territory within its jurisdiction, is not an inflexible rule. The power to order security is a discretionary power which must be exercised according to the circumstances of the case."

I should think it is also pertinent to refer to the following passage in *Mallal's* Supreme Court Practice at page 1065 under the sub-heading "Temporarily resident within jurisdiction" —

"The words in the rule 'temporarily resident within the jurisdiction', have an elastic meaning. The real object of the rule is to cover a case in which a foreigner ordinarily resident out of jurisdiction would not be here when he was wanted. In the ordinary case of a local man who could not pay, he would not be ordered to give security for costs, and there is no reason why a foreigner in a similar position should be ordered to give security. *Michiels* v. *Empire Palace Co.*, [1892] W.N. 38; 66 L.T. 132."

I have read very carefully the affidavits filed in connection with this application. The first question that this court has to consider is whether the plaintiff has at all material time been ordinarily resident within or out of jurisdiction. Counsel for the defendants drew my attention to the fact that although in the writ of summons in the action the plaintiff has described himself as residing at 34, Leboh Ampang, Kuala Lumpur, he was not then so resident. It is alleged that after a short stay in Malaysia during the previous suit of 1138/66, the plaintiff left for India in the later part of 1968 and only returned here in June 1971. He again left for India on September 13, 1971. Counsel for the defendants also drew my attention to the fact that the plaintiff grew up during his childhood days in the house of the deceased. The plaintiff on the other hand, averred that though he had lived with his adoptive parents and had spent a considerable period of time in India, he is a citizen of Malaysia. He further stated that he was obliged to reside temporarily in India on account of the litigation involving the estate of Valliappa Chettiar, his adoptive father. He further stated that he made trips to India whenever he was required to do so.

The fact that the plaintiff is a Federal citizen has not been disputed. Though that may well be, I think in considering the question of security for costs, the court should not be influenced by a person's domicile. One of the necessary factors that the court should consider is whether or not he is ordinarily resident within the jurisdiction. For this purpose, it is necessary to consider the merits of that particular case. The circumstances of this case reveal that during the last few years preceding this application, the plaintiff resided mainly in India. He has not specifically denied the allegation by the first defendant that after leaving for India in the later part of 1968, he only returned here in June 1971 and that he left again for India on September 13, 1971.

It is also revealed that in his suit in India, the plaintiff has described himself as residing at P. Alagapuri, Kilasavalpatti Post, Ramanathapuram District.

In view of the circumstances of this particular case, I am unable to arrive at a finding that the plaintiff, even though he is a citizen of this country, is ordinarily resident within jurisdiction. In exercising the court's discretion, I have borne in mind the probability that the effect of the order to provide security may shut out the plaintiff from proceeding with the suit. However, in the light of all the other relevant circumstances especially those that relate to the previous as well as the present suit, the non-existence of any property belonging to the plaintiff within jurisdiction and the existence of a similar suit pending in India, it is, I think, a proper case for an order that plaintiff should provide security for costs to be made.

There is one other matter which I should deal with at this point, that is, whether some limit must be imposed for payment of those costs. Mr. Shankar urged that some limit must be imposed for payment of those costs, failing which fresh action should stand dismissed. He referred to *Seton* on Judgments and Orders, 7th edition page 134/5. In the light of the circumstances of this case, I consider it appropriate that a time limit be imposed.

For reasons which I have stated earlier, I allow the application and order that —

"(a) all further proceedings in this suit be stayed until the plaintiff pays costs of appeal of the previous action in the sum of $2,704.87 and costs in the previous action in the sum of $2,469.50 (or such sum as may be awarded on review) and security for costs in the sum of $2,500 within one month from the date hereof failing which this action shall stand dismissed.

(b) upon payment of sums as aforesaid the summons-in-chambers shall be restored for hearing of the application of the defendants/applicants as contained in prayer (b).

Costs of today's application shall be taxed and paid to the defendants.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Raj & Co.*

PUBLIC PROSECUTOR v. ANTHONY

[R.Cr.J. (Sharma J.) April 20, 1972]

[Ipoh — Criminal Revision No. 19 of 1972]

Criminal Law and Procedure — Revision — Conviction on charge which was baseless — Plea of guilty — Effect of.

The accused was charged under section 27 of the Public Order (Preservation) Ordinance, 1958 for having failed to comply with the condition of an order made by the Chief Police Officer, Perak, on January 25, 1970 under section 13(1) of the said Ordinance. On February 11, 1972 the learned magistrate convicted the accused and sentenced him to six months' imprisonment on his plea of guilty. It was subsequently ascertained that the last declaration by the Minister of Home Affairs made under section 3(3) of the Public Order

(Preservation) Ordinance, 1958 was made on February 13, 1971 and the validity of the said declaration had come to an end one month thereafter. The offence was said to have been committed on February 10, 1972.

Furthermore, the court was informed that there was in fact no order made against the accused under the Public Order (Preservation) Ordinance, 1958 and that the order made against him was in fact under the section 2A(i) of the Restricted Residence Enactment (Cap. 39) by the Mentri Besar, Perak, on February 3, 1972.

Held: (1) there could be no offence committed by the accused after the life of the declaration was finally terminated;

(2) the charge was baseless and the accused was wrongly convicted thereon, even though he pleaded guilty. Therefore the order of the learned magistrate will be set aside and the conviction against the accused quashed.

Per Sharma J.: "...I regret the liberty of a subject has, by the lack of ordinary and requisite care expected of the courts in every case, been imperilled and unnecessarily interfered with. I may also take this opportunity to say that the prosecution itself should exercise a lot more care and vigilance in framing a charge against an accused person. The object of a charge is to give notice to the accused person of the essential facts constituting the offence which he is alleged to have committed and the law he has violated. The charge should be capable of being substantiated with as much evidence as is available to the prosecution. It is not enough merely to say that some offence has been committed by the accused. He is required to answer a specific charge and meet the specific allegations in the charge and pointedly plead thereto alone."

REVISION.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the Public Prosecutor.

Accused in person.

Sharma J. (delivering oral judgment): This revision comes up before me at the request of the learned magistrate, Bruas. The accused was charged under section 27 of the Public Order (Preservation) Ordinance, 1958 for having failed to comply with the condition of an order made by the Chief Police Officer, Perak, on the 25th January, 1970 under section 13(1) of the said Ordinance. The learned magistrate convicted the accused and sentenced him to six months' imprisonment on the 11th February, 1972. After having convicted the accused on his plea of guilty, it came to the knowledge of the learned magistrate that the last declaration by the Minister of Home Affairs made under section 3(3) of the Public Order (Preservation) Ordinance, 1958 was made on the 13th February, 1971 and the validity of the said declaration had come to an end one month thereafter. There could consequently be no offence committed by the accused after the life of the declaration was finally and forever finished. The offence was said to have been committed on the 10th February, 1972, *i.e.* almost a year after the said declaration had lost its validity, force and affectiveness.

It has, however, been brought to my attention by the learned deputy that there was in fact no order made against the accused under the Public Order (Preservation) Ordinance, 1958 and that the order made against him was in fact under section 2A(i) of the Restricted Residence Enactment (Cap. 39) by the Mentri Besar, Perak, on the 3rd February, 1972. The charge was consequently baseless and the accused was wrongly convicted thereon even though he had pleaded guilty. I need not repeat what I have already said on several occasions that it is the duty of the magistrates to exercise a good deal of care in accepting a plea of guilty. Again no facts seem to have been recorded by the learned magistrate. It may and does sometimes become dangerous to convict an accused merely on his plea of guilty without recording any facts and this case is illustrative of the danger inherent in that practice. If the learned magistrate had taken the precaution to ask for facts and a copy of the order referred to in the charge was produced it would with ease have become plain and apparent that there in fact existed no such order as was referred to in the charge. I regret the liberty of a subject has by the lack of ordinary and requisite care expected of the courts in every case been imperilled and unnecessarily interfered with. I may also take this opportunity to say that the prosecution itself should exercise a lot more care and vigilance in framing a charge against an accused. The object of a charge is to give notice to the accused of the essential facts constituting the offence which he is alleged to have committed and the law he has violated. The charge should be capable of being substantiated with as much evidence as is available to the prosecution. It is not enough merely to say that some offence has been committed by the accused. He is required to answer a specific charge and meet the specific allegations in the charge and pointedly plead thereto alone.

I am, however, thankful to the learned deputy for having at this stage very candidly conceded that the charge against the accused was wrong in law and unsustainable. But for the manly and scrupulous honesty with which the learned deputy has acknowledged the folly of the charge and the futility of the prosecution case it would have been impossible for me to know the facts relied upon by the prosecution. I commend the spirit in which the information has been given to the court. Fairness should characterise every prosecution. The magistrates (and judges as well), like all human beings, at times are apt to fall into error and take the wrong sow by the ear. Injustice is thus prone to result in those cases where the court slips into such error. It however adds to the stature, lustre and dignity of man if once that mistake is discovered, detected or brought to his notice he does not hesitate to own it. The learned magistrate deserves credit for having brought this matter to the High Court and the learned deputy equally great credit for having stated the correct position so that the mistake already made could be rectified and the accused restored to his freedom. The order of the learned magistrate is set aside and the conviction against the accused quashed.

Order accordingly.